IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

OP.No. 2669 of 1997(P)

PETITIONER:

DR. JACOB MANI,
T.C.16/723,
MUDIPURA ROAD,
JAGATHY, THIRUVANANTHAPURAM.

BY ADV. SRI.THOMAS ANTONY KALLANPALLY
SRI.K.M.JAMALUDHEEN
SRI.FELIX JOSE

RESPONDENTS:
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1. **STATE OF KERALA,**
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF COLLEGIATE EDUCATION,**
THIRUVANANTHAPURAM.

3. **PRINCIPAL,**
MARTHOMA COLLEGE, THIRUVALLA.

BY GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN for R1&R2
BY ADV. SRI.CYRIAC THOMAS
SRI.SATHISH NINAN for R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.2669/1997 P

ORDER ON C.M.P.NO.4769/1997 IN O.P.NO.2669/1997 P

DISMISSED

12/02/2007 **SD/- K.PADMANABHAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE G.O.(RT) NO.1991/90 H.EDN. DTD. 24/11/1990.**

EXT.P2; **COPY OF THE BOND EXECUTED BY THE PETITIONER IN FAVOUR OF THE RESPONDENT DTD. 18/12/90.**

EXT.P3: **COPY OF THE G.O.(RT) NO.1616/93/TVM. DTD. 20/10/1993.**

EXT.P4: **COPY OF THE SUPPLEMENTAL AGREEMENT EXECUTED DTD. 4/11/1993.**

EXT.P5: **COPY OF THE PROVISIONAL CERTIFICATE DTD. 29/06/1996.**

EXT.P6: **COPY OF THE REPORT ON HINDU DAILY DTD. 29/08/1996.**

EXT.P7: **COPY OF THE REPLY LETTER SEND BY THE PETITIONER DTD. 31/08/1995.**

EXT.P8: **COPY OF THE MEMO ISSUED BY THE 2ND RESPONDENT.**

EXT.P9: **COPY OF THE LETTER OF EXPLANATION BY THE PETITIONER DTD. 5/11/1996.**

EXT.P10: **COPY OF THE LETTER OF DR.G.GOPAKUMAR DTD. 5/11/1996.**

EXT.P11: **COPY OF THE OFFICE MEMO OF THE 2ND RESPONDENT DTD. 3/12/1996.**

EXT.P12: **COPY OF THE OFFICE MEMO OF THE SECOND RESPONDENT DTD. 3/12/1996.**

EXT.P13: **COPY OF THE REPRESENTATION MADE BY THE PETITIONER DTD. 10/01/1997.**

3RD RESPONDENT'S EXHIBIT:

EXT.R3(A): **COPY OF THE COMMUNICATION DTD. 13/02/1997.**

/TRUE COPY/

Kss

K.PADMANABHAN NAIR, J.

O.P.No. 2669 OF 1997

Dated this the 12th day of February, 2007

J U D G M E N T

Petitioner applied leave for three years for undergoing Ph.D. course. The leave was sanctioned as per Ext.P1 order. He was asked to execute a bond which was executed as per Ext.P1. One of the conditions contained in the bond was that in case the Bounden fails to complete the course successfully due to indifference or negligence on his part the Bounden and sureties shall pay to the Government a penalty of Rs. 7,000/- (Seven thousand only). Petitioner completed the course and secured Ph.D degree also. But there was delay in submitting the thesis. On account of delay the petitioner submitted Ext.P7 representation stating that the delay occurred due to the reasons beyond his control. It was averred that due to the failure developed in the hardware around the time of submission, he could not submit the thesis in time and considerable amount of time was lost in salvaging the entries made and re-typed. The Government without assigning any reason rejected the request

and issued Ext.P8 order imposing a penalty of Rs.9,625/-. Challenging that order this writ petition is filed.

2. Learned counsel appearing for the petitioner has submitted that there are a number of instances wherein the Government itself had condoned the delay. He has made available copies of such an order. It is also argued that the bond can be forfeited only if the Bounden fails to complete the Ph.D course. In the case at hand the petitioner completed the course within the time limit and remitted the fees also. But there was delay in submitting the thesis. According to the petitioner he prepared the thesis but a defect developed in the hardware and he has to spend considerable amount of time in salvaging the entries made and re-typed. That was a very valid explanation. Without considering that explanation the penalty was imposed. There must be indifference or negligence on the part of the Bounden to forfeit the bond. On the facts and circumstances of the case it is not possible to hold that there was negligence or indifference on the part of the petitioner. The delay occurred due to the reasons beyond the control of the petitioner. So the Government was not justified forfeiting the bond and imposing the penalty. The order is liable to be quashed.

In the result, the original petition is allowed. All further proceedings initiated by the 1st respondent to realise the penalty in pursuance to Ext.P8 order is hereby quashed.

(K.PADMANABHAN NAIR, JUDGE)

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K.PADMANABHAN NAIR, J.

O.P.No.2669/1997

J U D G M E N T

12th February, 2007